

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN ASSEMBLY MAY 20, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2490**

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**Introduced by Assembly Member Jones**

February 19, 2010

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An act to add Section 11658.5 to the Insurance Code, relating to workers' compensation insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Jones. Workers' compensation insurance: dispute resolution: arbitration clauses.

Existing law requires that a workers' compensation insurance policy or endorsement not be issued by an insurer unless the insurer files a copy of the form or endorsement with the rating organization and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would require *that* any agreement, other than a settlement agreement resolving a particular dispute, between an employer, *whose principal place of business is in California*, and a workers' compensation insurer concerning resolution of disputes, including, but not limited to, an arbitration clause arising out of a workers' compensation policy or endorsement, *shall* be part of the form or endorsement filed with the

rating organization and subject to approval by the commissioner and, shall be provided to the employer contemporaneously with any written quote that offers to provide insurance coverage, and shall contain provisions to resolve disputes that arise in this state in the California courts and under California law. *The bill would provide, however, that prior to the inception of the policy, employers and workers' compensation insurance companies may, after freely negotiating, expressly agree to a choice of law or a choice of forum other than California.* Failure to observe those requirements would render the any dispute resolution agreement provision void and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) All California employers subject to the Workers'
- 4 Compensation Law are required by law to obtain insurance for
- 5 their employees.
- 6 (b) Workers' compensation policies and endorsements are highly
- 7 regulated and designed primarily to protect the worker and ensure
- 8 prompt payment of claims.
- 9 (c) The Legislature has authorized the Insurance Commissioner
- 10 (commissioner) to oversee the form and substance of all workers'
- 11 compensation insurance policies and endorsements, including
- 12 everything from the scope of required coverage provided to
- 13 employees, to the amount employers pay insurers for premiums.
- 14 endorsements.
- 15 (d) Insurance companies providing workers' compensation
- 16 policies and endorsements are required by law to file the policies
- 17 and endorsements with the rating organization for transfer to the
- 18 commissioner.
- 19 (e) Disputes between employers and insurance companies
- 20 regarding workers' compensation plans can arise, and resolution
- 21 of these disputes through litigation can be expensive, uncertain,
- 22 and time consuming.
- 23 (f) ~~In an effort to save time, costs, and the uncertainty of~~
- 24 ~~litigation, national workers' compensation carriers often place~~
- 25 ~~mandatory arbitration clauses into policies and, over time, these~~

1 arbitration clauses have become complex and expensive, and have  
2 diminished the rights of the parties in the arbitration proceedings.

3 ~~(g) Despite the requirement that the workers' compensation~~  
4 ~~carrier file policies and endorsements with the rating organization~~  
5 ~~and wait a prescribed period, some workers' compensation carriers~~  
6 ~~issue separate or side agreements, sometimes called Insurance~~  
7 ~~Program Agreements or IPAs, that are not provided to the employer~~  
8 ~~until after the policy or endorsement is accepted, that require~~  
9 ~~arbitration of any disputes between the employer and the carrier~~  
10 ~~concerning the workers' compensation policy or endorsement, and~~  
11 ~~that have not been filed with the rating organization or~~  
12 ~~commissioner.~~

13 ~~(h) These unfiled separate or side agreements often choose a~~  
14 ~~foreign jurisdiction's law to interpret the plan and resolve disputes,~~  
15 ~~and choose a state other than California as the location or venue~~  
16 ~~to conduct arbitrations. This subjects Californians to another state's~~  
17 ~~laws and forces them to travel outside this state to conduct dispute~~  
18 ~~resolution proceedings, resulting in significant cost burdens.~~

19 ~~(i) California employers have successfully challenged some of~~  
20 ~~these side agreements containing arbitration clauses; however, it~~  
21 ~~should not be necessary to burden the California courts with these~~  
22 ~~cases.~~

23 *(f) In an effort to save time and costs, and because of the*  
24 *uncertainty of litigation, workers' compensation carriers and*  
25 *employers use arbitration to resolve disputes.*

26 ~~(j)~~

27 (g) California has a compelling state interest in ensuring that  
28 workers' compensation policies and endorsements are enforced  
29 under California law and not subject to interpretation by other  
30 jurisdictions, and that any dispute resolution proceedings are  
31 conducted within its borders.

32 *(h) Employers and workers' compensation carriers should be*  
33 *freely able to negotiate and agree to the terms of arbitration*  
34 *without undermining the protections afforded to California*  
35 *employers under California law.*

36 SEC. 2. Section 11658.5 is added to the Insurance Code, to  
37 read:

38 11658.5. (a) Any agreement, other than a settlement agreement  
39 resolving a particular dispute, between an employer, *whose*  
40 *principal place of business is in California,* and a workers'

1 compensation insurer concerning resolution of disputes, including,  
2 but not limited to, an arbitration clause arising out of a workers'  
3 compensation policy or endorsement shall conform to all of the  
4 following:

5 (1) It shall be part of the form or endorsement filed with the  
6 ~~rating organization and subject to approval by the commissioner~~  
7 ~~pursuant to Section 11658.~~ *rating organization pursuant to Section*  
8 *11658, and shall be provided to the employer contemporaneously*  
9 *with any written quote that offers to provide insurance coverage.*

10 (2) It shall contain a choice of law provision that identifies  
11 California law as the law to be used to resolve any dispute that  
12 arises in California.

13 (3) It shall contain a forum selection provision that identifies  
14 California as the proper venue for any proceeding regarding a  
15 dispute that arises in California.

16 (4) *Notwithstanding paragraphs (2) and (3), prior to the*  
17 *inception of the policy, employers and workers' compensation*  
18 *insurance companies may, after freely negotiating, expressly agree*  
19 *to a choice of law or a choice of forum other than California.*

20 (b) Failure to observe the requirements of this section shall  
21 ~~render the any dispute resolution agreement provision~~ void and  
22 unenforceable.